

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MIRIAM ROCEK,

Plaintiff,

-against-

NYPD SERGEANT FIOR BLANCO, NYPD LEGAL  
BUREAU LIEUTENANT DANIEL ALBANO,  
NYPD LEGAL BUREAU DETECTIVE KENNETH  
O'DONNELL, NYPD OFFICER MICHAEL GALGANO  
and NYPD OFFICER CYNTHIA BOYLE,

Defendants<sup>1</sup>

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[PROPOSED]  
JOINT PRETRIAL ORDER

15 Civ. 2017 (PKC)(SN)

The Parties in the above-captioned action, having conferred among themselves through counsel, hereby submit the following proposed Joint Pretrial Order:

**I. The names, addresses, cell phone numbers and email addresses of all counsel participating in the trial:**

**Plaintiff's Counsel**

1. Gideon Orion Oliver  
*Attorney for Plaintiff*  
Miriam Rocek  
277 Broadway, Suite 1501  
New York, NY 10007  
Tel: (646) 263-3495  
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Email: gideon@gideonlaw.com

2. Elena Cohen

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<sup>1</sup> Defendants have amended the caption to reflect the only parties remaining in this action following the Court's Opinion and Order dated March 7, 2018) (Dkt No. 48), the Court's Opinion and Order dated July 25, 2019) (Dkt. No. 164 and by stipulation of the parties. (Dkt. No. 138). Plaintiff's position is that such an amendment would require an application to the Court.

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*Attorney for Plaintiff*  
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**Defendants' Counsel**

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**II. Stipulations of fact and testimony, including a certification by lead trial counsel for all parties that they have met face-to-face for the purpose of endeavoring to reach agreement upon stipulations of fact and stipulations of testimony and the content of their stipulations:**

There are no stipulated facts and testimony. Counsel for the parties met face-to-face for the purpose of endeavoring to reach agreement upon stipulations of fact on February 20, 2020.

**III. A statement of the claims and defenses that remain to be tried. Any claim or defense not so identified is deemed withdrawn:**

**Plaintiff's Statement**

Plaintiff Miriam Rocek's remaining claims to be tried are claims for violations of her so-called "fair trial rights" rights protected under the Fifth, Sixth, and/or Fourteenth Amendments to the United States Constitution to be free from being deprived of life, liberty, or property as the result of Defendants' having forwarded fabricated information to prosecutors.

Those claims remain against Defendants Daniel Albano, Fior Blanco, Cynthia Boyle, Michael Galgano, and Kenneth O'Donnell.

**Defendants' Statement**

Following the Court's Opinion and Order dated March 7, 2016 (Dkt. No. 48), and the Court's Opinion and Order dated July 29, 2019 (Dkt. No. 66), plaintiff's only remaining claim to be tried by the jury is plaintiff's 42 U.S.C. §1983 denial of right to fair trial claim against Defendants Fior Blanco, Daniel Albano, Kenneth O'Donnell, Michael Galgano and Cynthia Boyle and damages arising therefrom.

Defendants' defenses are as follows:

- i. Defendants did not fabricate material evidence against the plaintiff.
- ii. Defendants have not violated any rights, privileges, or immunities under the Constitution of laws of the United States or the State of New York or any political subdivision thereof, nor has Defendant violated any acts of Congress providing for the protection of civil rights.
- iii. Defendants submit that they may be entitled to the defense of qualified immunity.
- iv. Any injury alleged to have been sustained resulted from Plaintiff's own culpable or negligent conduct and was not the proximate result of any act of defendants.

**IV. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed:**

Plaintiff's Statement. Plaintiff has requested a trial by jury. Plaintiff estimates that the trial will last approximately four to five days from jury selection until the jury is charged

Defendants' Statement. This case is to be tried by a jury and defendants estimate that trial will require three to four days.

**V. A page and line designation of deposition testimony to be offered by each party on the party's case in chief, with any cross-designations and objections by any other party:**

Plaintiff's designations:

At this time, Plaintiff does not intend to use "read-ins" of any deposition testimony in her case-in-chief because she has informed Defendants she intends to present testimony from Defendants and certain third-party witnesses who were deposed in this case and in the related *Carvalho* matter, but reserves the right to use any deposition for impeachment purposes or in the event that any witness becomes unavailable for testimony at trial or in any other manner authorized by the Federal Rules of Civil Procedure and the Federal Rules of Evidence should it become necessary.

Defendant's designations:

Defendants are not designating any prior deposition testimony for their case-in-chief, but respectfully reserve the right to utilize deposition testimony in any manner authorized by the Federal Rules of Evidence and the Federal Rules of Civil Procedure should it become necessary including, but not limited to, for impeachment. Additionally, defendants object to use of deposition testimony of any witness not present at trial unless the party seeking to introduce such testimony has made a showing that the witness is unavailable as defined by Rule 804 of the Federal Rules of Evidence.

**VI. A list by each party of exhibits to be offered in the party's case-in-chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground:**

Plaintiff's list:

<u>Exhibit</u>	<u>Description</u>	<u>Objection(s)<sup>2,3</sup></u>
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<sup>2</sup> Per the Court's Individual Rules of Practice, this column contains only "one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground."

With respect to Defendants' statements that they "cannot verify the authenticity" of certain exhibits: Defendants have copies of all of the documents referred to in the JPTO with the possible exception of the final proposed exhibit because they were produced to Defendants in *Marom* (and in some cases, the documents were produced to Defendants in both *Marom* and *Carvalho*); and because they were also filed as part of Plaintiff's summary judgment briefing in this case. Moreover, Defendants have had Plaintiff's proposed JPTO for two weeks and never once raised any concerns that they could not verify the authenticity of any of Plaintiff's proposed exhibits until this afternoon. Upon learning of Defendants' purported concerns on the afternoon the proposed JPTO is due to the Court, Plaintiff's counsel offered to provide Defendants with courtesy copies of the exhibits without Bates Numbers that Defendants' counsel claim they cannot verify the authenticity of.

<b>Letter</b>		
A.	Mass Arrest Report - D593b-D600b	*
B.	After-Action Report - <i>Carvalho</i> D49-D57	*
C.	Video exhibit, "Inside the NYPD Re-Eviction of Liberty Square M17.mp4" ("NYPD Re-Eviction") <sup>4</sup>	
D.	Video exhibit, "NYPD's Iron Fist_ OWS Re -Occupation Arrests Protester Has Seizure in Handcuffs.mp4" ("NYPD Iron Fist")	
E.	Video exhibit, "(2_2) NYPD violence v. OWS - March 17, 2012 (OWS 6 Month Anniversary).mp4" ("NYPD Violence")	
F.	Video exhibit, ""#ows arrests inside Zuccotti park during reoccupation 31712 #m17.mp4"	
G.	NYPD Violence Still, 3:18	
H.	NYPD Violence Still, 3:20	
I.	NYPD Re-Eviction Still, 0:18	
J.	NYPD Violence Still, 3:22	
K.	NYPD Violence Still, 3:24	
L.	NYPD Re-Eviction Still, 0:34	

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Defendants' position is that Defendants cannot stipulate to the authenticity of documents that are not properly identified as having been produced in this case.

<sup>3</sup> An asterisk simply is an indication that a custodian of record does not need to be called to verify the exhibit as a true copy. An asterisk does not affect any other objection and it is not a concession of admissibility without a proper witness.

<sup>4</sup> The video exhibit titles are taken from the filenames of the videos as they were exchanged by the parties.

M.	NYPD's Iron Fist Still, 1:32	
N.	NYPD's Iron Fist Still, 2:55	
O.	NYPD's Iron Fist Still, 3:09	
P.	Rocek Photo of Torn Coat - P000116	
Q.	Rocek Torn Coat	
R.	Rocek journal entry	
S.	NYPD Roll Call - <i>Carvalho</i> D496-D514	*
T.	December 18, 2014 Letter from Joy Anakhu to Rebecca Heinegg and Gideon Oliver in <i>Carvalho</i>	*
U.	February 3, 2015 Letter from Joy Anakhu to Rebecca Heinegg and Gideon Oliver in <i>Carvalho</i>	*
V.	Second February 3, 2015 Letter from Joy Anakhu to Rebecca Heinegg and Gideon Oliver in <i>Carvalho</i>	*
W.	<i>THE EXHIBIT FORMERLY DESIGNATED AS "W" HAS BEEN OMITTED AS DUPLICATIVE</i>	
X.	Initial Arrest Summary - <i>Carvalho</i> D94	*
Y.	PG 213-05 – Duties at An Unusual Disorder - <i>Carvalho</i> D418-D426	*
Z.	PG 213-06 – Large Scale Arrest Processing Procedure - <i>Carvalho</i> D427-D428	*
AA.	PG 213-11 – Policing Special Events/Crowd Control - <i>Carvalho</i> D429-D434	*
BB.	PG 213-15 – Duties and Responsibilities at Special Events - <i>Carvalho</i> D435-D440	*

CC.	PG 208-03 – Arrests/General Processing	As exhibit is not identified with Bates number defendants cannot verify authenticity
DD.	PG 208-15 – Arrest Report Preparation at Stationhouse	As exhibit is not identified with Bates number defendants cannot verify authenticity
EE.	PG 208-20 – Turnover Arrests	As exhibit is not identified with Bates number defendants cannot verify authenticity
FF.	Legal Bureau Online Booking Sheet (“OLBS”) Narrative.- D181	
GG.	Albano Overtime Report - D263-D264	*
HH.	O’Donnell Overtime Report - D265	*
II.	O’Donnell Overtime Tracking Sheet - D266-D267	*
JJ.	Rocek OLBS Report – Arrest # M12624791 – Bates No. D011-D014 <sup>5</sup>	*
KK.	Rocek OLPA Report - D015-D016	*
LL.	Rocek DA Datasheet - 000144, 000147-000149	As exhibit is not identified with Bates number defendants cannot verify authenticity
MM.	Rocek Complaint - D97-D98	*
NN.	Rocek Court Action Sheet - D206-D207, D215	*
OO.	Rocek Certificate of Disposition - D044	*

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<sup>5</sup> For each OLBS Report, the Arrest # (beginning with an “M”) is listed first, followed by the corresponding Bates Nos.

PP.	Google Map of Area Surrounding Zuccotti Park marked by Defendant Boyle at her deposition	
QQ.	Boyle OLBS Reports M12624775 - D328-D331 M12624781 - D334-D337 M12624787 - D430-D433 M12624794 - D495-D498	*
RR.	Boyle Complaints	*
SS.	<i>THE EXHIBIT FORMERLY DESIGNATED AS "SS" HAS BEEN OMITTED AS DUPLICATIVE</i>	
TT.	Boyle OLPA Reports	As exhibit is not identified with Bates number defendants cannot verify authenticity
UU.	Boyle DA Datasheet - 000144, 000147-000149	As exhibit is not identified with Bates number defendants cannot verify authenticity
VV.	Galgano OLBS Reports M12624773 - D001-D004 M12624808 - D268-D271 M12624780 - D274-D277 M12624797 - D280-D283 M12624790 - D489-D492	*
WW.	Galgano DA Datasheet - 000182-000185	As exhibit is not identified with Bates number defendants cannot verify authenticity
XX.	Galgano Complaint	As exhibit is not identified with Bates number defendants cannot verify authenticity
YY.	Galgano Decline to Prosecute ("DP") Forms	As exhibit is not identified with Bates



		number defendants cannot verify authenticity
ZZ.	Galgano Memo Book - D025-D029	*
AAA.	Blanco Memo Book - D034-D042	*
BBB.	Valentine OLBS Reports M12624801 - D018-D021 M12624820 - D340-D343 M12624807 - D346-D349 M12624832 - D352-D355 M12624813 - D358-D361	*
CCC.	Valentine DA Datasheets	As exhibit is not identified with Bates number defendants cannot verify authenticity
DDD.	Valentine Complaints	As exhibit is not identified with Bates number defendants cannot verify authenticity
EEE.	Valentine Memo Book - D30-D31	*
FFF.	Viviano Memo Book – <i>Carvalho</i> D344-D350, D441	*
GGG.	Ahmed OLBS Reports M12624858 - D406-D409, M12624856 - D412-D415, M12624857 - <i>Carvalho</i> D1-D4 M12624862 - <i>Carvalho</i> D5-D8 M12624860 - <i>Carvalho</i> D17-D20	*
HHH.	Ahmed DP Forms	As exhibit is not identified with Bates number defendants cannot verify authenticity
III.	Ahmed Memo Book - <i>Carvalho</i> D316-D318	*
JJJ.	A. Rodriguez OLBS Reports M12624846 - D507-D510 M12624821 -D513-D516	*

	M12624853 - D525-D528 M12624835 - <i>Carvalho</i> D13-D16 M12624838 - <i>Carvalho</i> D29-D32	
KKK.	A. Rodriguez DP Forms	As exhibit is not identified with Bates number defendants cannot verify authenticity
LLL.	A. Rodriguez Memo Book - <i>Carvalho</i> D332-D336	*
MMM.	Ho OLBS Reports  M12624766 - D364-D367 M12624774 -D460-D463 M12624792 - D466-D469 M12624785 - D472-D475 M12624776 - D478-D481	*
NNN.	Ho Complaints	As exhibit is not identified with Bates number defendants cannot verify authenticity
OOO.	Li OLBS Reports  M12624851 - D376-D379 M12624843 - D394-D397 M12624839 - <i>Carvalho</i> D9-D12 M12624847 - <i>Carvalho</i> D21-D24 M12624825 - <i>Carvalho</i> D33-D36	*
PPP.	Li DP Forms	As exhibit is not identified with Bates number defendants cannot verify authenticity
QQQ.	Li Memo Book - <i>Carvalho</i> D326-D331	*
RRR.	L. Rodriguez OLBS Reports  M12624810 - D531-D534 M12624803 - D537-D540 M12624799 - D543-D546 M12624811 - D549-D552 M12624816 - D555-D558	*

SSS.	L. Rodriguez Complaints	As exhibit is not identified with Bates number defendants cannot verify authenticity
TTT.	Lindao OLBS Reports M12624828 - D286-D289 M12624824 - D292-D295 M12624833 - D298-D301 M12624831 - D304-D307 M12624836 -D322-D325	*
UUU.	Lindao DP Forms	As exhibit is not identified with Bates number defendants cannot verify authenticity
VVV.	Lindao Complaints	As exhibit is not identified with Bates number defendants cannot verify authenticity
WWW.	Sullo OLBS Reports M12624783 - D436-D439 M12624834 - D442-D445 M12624827 - D448-D451 M12624837- D454-D457 M12624840 - D501-D504	*
XXX.	Sullo DP Forms	As exhibit is not identified with Bates number defendants cannot verify authenticity
YYY.	Sullo Complaint	As exhibit is not identified with Bates number defendants cannot verify authenticity
ZZZ.	Waring OLBS Reports M12624866 -D400-D403 M12624873 - D484-D486	*

AAAA.	Waring Complaint	As exhibit is not identified with Bates number defendants cannot verify authenticity
BBBB.	Defendants' Responses and Objections to Plaintiffs' Supplemental Requests for Admissions dated May 23, 2016	*
CCCC.	Defendants' First Supplemental Responses and Objections to Plaintiffs' Supplemental Requests for Admissions dated July 20, 2016	*
DDDD.	Defendants' Rule 26(a) Disclosures dated October 18, 2016	*
EEEE.	Defendants' Responses and Objections to Plaintiffs' Interrogatories and Document Demands dated November 10, 2016	*
FFFF.	Arrest Processing Summary (demonstrative exhibit)	
GGGG.	PG 203-08 – Making False Statements	As exhibit is not identified with Bates number defendants cannot verify authenticity

- Plaintiff reserves the right to use additional illustrative exhibits prepared for the purposes of trial.
- Plaintiff reserves the right to use any of the items on Defendants' exhibit list, without waiving any appropriate objections to introduction of same.
- Plaintiff reserves the right to amend this exhibit list for good cause.

Defendant's list:<sup>6</sup>

Exhibit Letter	Description	Objection(s), if any
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<sup>6</sup> Defendants reserve the right to use plaintiff's exhibits for any purpose and reserves the right to amend their exhibit list.

Exhibit Letter	Description	Objection(s), if any
A.	NYPD TARU Video—Det. Beatty and Stills of Video	

**VII. A statement of the damages claimed and any relief sought, including the manner and method used to calculate the claimed damages and a breakdown of its elements:**

Ms. Rocek claims damages for the deprivations of liberty she suffered after her arrest, including in the form of being detained for 22 hours post-arrest, being formally arraigned and charged with criminal violations, being released on her own recognizance subject to New York Criminal Procedure Law § 510.40, being required to appear in court five additional times, and having criminal charges pending against her for over a year, as well as related reputational harm and “garden variety” emotional distress.

Plaintiff is also seeking punitive damages against the Defendants related to their unconstitutional conduct.

Plaintiff is seeking attorney’s fees and costs pursuant to 42 U.S.C. Section 1988.

Plaintiff respectfully submits that the jury will determine damages in the manner it deems appropriate.

**VIII. The name, and if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises:**

Plaintiff’s Witness List:

Parties

1. Plaintiff Miriam Rocek
2. Defendant Lt. Daniel Albano
3. Defendant Sgt. Fior Blanco
4. Defendant Cynthia Boyle, Shield # 06663
5. Defendant Michael Galgano, Shield # 2671
6. Defendant Kenneth O’Donnell

Third-Party Witnesses

7. NYPD Officer Steven Valentine, Shield # 13585
8. NYPD Officer Jabbed Ahmed, Shield # 19415

9. NYPD Officer Cheung Li, Shield # 5474
10. NYPD Officer Alexis Rodriguez, Shield # 28722
11. NYPD Chief Joseph Esposito
12. NYPD Inspector Edward Winski
13. NYPD Lt. Frank Viviano

- In addition to the witnesses listed, Plaintiff reserves the right to call any of the witnesses listed by Defendants.
- Plaintiff further reserves the right to call additional witnesses for purposes of rebuttal and/or impeachment.

Defendant's Witness List:

1. NYPD Chief Edward Winski
2. NYPD Lieutenant Daniel Albano
3. NYPD Detective Kenneth O'Donnell (currently on military leave. Defendants are attempting to determine if he will return before trial)
4. NYPD Sergeant Fior Blanco
5. NYPD Officer Michael Galgano
6. ADA Patricia Stolfi-Collins (or other representative from DANY)
7. ADA Kristen Mercani (or other representative from DANY)
8. NYPD Detective Michael Beatty (or other representative from the NYPD TARU unit)

**SO ORDERED.**

**Dated:** \_\_\_\_\_, 2020  
New York, New York

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**HONORABLE P. KEVIN CASTEL  
UNITED STATES DISTRICT JUDGE**

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Dated: February 21, 2020  
Brooklyn, New York

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By:   
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Respectfully Submitted,

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